IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 61 of 2000.

Judgement reserved on: 11.10.2007.

Date of decision: 16.11.2007.

State of H.P. ….. **Appellant.**

Vs.

Virender Kumar & anr. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. M.L. Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. Ashok Sharma, Advocate.**

Kuldip Singh, Judge.

This appeal has been filed against the judgement of acquittal, dated 5.7.1997, passed by the learned Judicial Magistrate (II), Hamirpur, in police challan No. 92-1-93, acquitting respondents, under Sections 332, 506 read with Section 34 IPC.

2. The prosecution case in brief is that PW 1 Suresh Kumar Dhiman, Medical Officer, Ayurvedic Hospital, Bijhari on 10.6.1993 made a written complaint Ex. PW 1/A to police at Police Station, Barsar that on 9.6.1993 at about 10.30 a.m. he was working as Medical Officer at Ayurvedic Hospital, Bijhari, Jagjit Singh (deceased), Narayan Singh, Bhisham Singh accused- respondents

---

Whether the reporters of the local papers may be allowed to see the Judgment?

entered in his room in the hospital and they pounced upon him, as a result of which the buttons of his shirt were broken, they caused obstruction in discharging his duties as public servant. He was rescued by Shyam Dass, Suresh Kumar, Ram Dassi, Smt. Brahmi Devi, Narayani Devi and a sweeper. The respondents threatened him to do away with his life as and when he would visit Bangana. Thereafter respondents left the place using foul language. The respondents are on inimical terms with the complainant, as he does not direct the patients to purchase the medicines from the medical store run by the respondents. The complainant suffered injuries on his neck and chest in the incident. On this, rapat Ex. PW 8/A was entered and FIR No. 46 of 1993 came to be registered at Police Station, Barsar, under Sections 353, 332, 504, 506 read with Section 34 IPC. The complainant was medically examined by PW 11 Dr. Bhishan Dhiman, who issued MLC Ex. PW 11/A. After completion of investigation, challan was put up against deceased Jagjit Singh and the respondents and they were charged, under Sections 332, 506 read with Section 34 IPC. The respondents pleaded not guilty and claimed trial. The prosecution examined 13 witnesses. The statements of respondents were recorded, under Section 313 Cr.P.C. The respondents examined two witnesses, namely DW 1 Ishwar Dass and DW 2 Jagdish Chand in defence. The learned trial court acquitted the respondents, hence, State is in appeal.

3. I have heard learned Additional Advocate General and Mr. Ashok Sharma, learned counsel for the respondents. The learned Additional Advocate General has submitted that trial court has

misinterpreted and misconstrued the evidence on record and has erred in acquitting the respondents. Per contra, the learned counsel for the respondents has supported the impugned judgement.

4. PW 1 Suresh Kumar has stated that on 9.6.1993 at 10.30 a.m., he was examining patients in his office, all of a sudden respondents entered there and caught hold him from neck and his shirt was torn. He pressed the bell, respondents caught hold his hand. On hearing the bell, Ram Dass, Suresh Kumar, Brahmi Devi and Narayani Devi rescued him. The respondents abused him as well as threatened him. The respondents told him to send the patients to them. He reported the matter to S.D.M., and later on to police as well as the department. The police came on the spot. He was medically examined at Barsar. In cross-examination, he has stated that he was caught from the neck by Jagjit Singh through collar. He did not have any talk with the respondents and there was no dispute between him and the respondents prior to the occurrence. He has admitted having written Ex. D-3 and has also stated that Ex. D-4 is written by a patient who was admitted there.

5. PW 2 Narayani Devi has stated that at about 2.00 p.m., the respondents were outside Bijhari dispensary and the doctor was inside. She did not support the prosecution and was declared hostile. She was cross-examined by the prosecution, but nothing favourable to prosecution was extracted in her cross examination. PW 3 Sandhya Devi was given up by the prosecution as witness. PW 4 Battan Singh has stated that on 9.6.1993 at 10.30 a.m. he was sitting in the verandah of the hospital. Persons from Kanwar Medical Store

came there and started abusing. The elder son entered the room and pulled the doctor from neck, second one pulled the doctor from arm and the third one was abusing. The doctor was inside the room and his shirt was torn. The ladies, who were inside the room, saved the doctor. Doctor did nothing. Later on police came there. No employee came there at that time. In cross examination, he has stated that he had applied for handicapped certificate. There were 5-6 men inside and 3-4 in the verandah. The doctor was examining 5-6 ladies. At that time 20-25 men gathered there. He does not know why the dispute had arisen. He pointed out towards respondent Virender Kumar, who caught the doctor from neck.

6. PW 5 Dina Nath, PW 6 Dr. J.R. Azad and PW 7 Yudhbir Singh are formal witnesses. PW 8 LHC Tara Chand has proved rapat No. 13, dated 10.6.1993 Ex. PW 8/A. PW 9 SI/SHO Krishan Gopal has prepared the challan. PW 11 Dr. Bhishan Dhiman has examined the complainant and issued MLC Ex. PW 11/A. In his cross-examination, he has stated that possibility of injuries may be due to stiffness of ailment. There was no evidence of injuries. The injury No.1 could be caused by fall or self inflicted or by striking against surface. PW 12 Ramji Dass, Sweeper did not support the prosecution and he was declared hostile. PW 13 Dilshad Mohammad is the Investigating Officer.

7. DW 1 Ishwar Dass, Secretary, Gram Panchayat has proved resolutions, dated 6.6.1994 and 6.5.1994 Ex. DA and Ex. DB. DW 2 Jagdish Chand has stated that he remained Vice-President of Gram Panchayat, Bijhari from 1991 to 1995. Panchayat had written

against the doctor of Ayurvedic dispensary, Bijhari. This is the entire evidence led in the case.

8. The respondents were charged, under Sections 332, 506 read with Section 34 IPC. PW 1 Suresh Dhiman complainant in his statement has simply stated that respondent Jagjit caught hold him from the beck and on pressing the bell Suresh Kumar, Brahmi Devi and Narayani Devi rescued him. They abused and threatened him. He has nowhere stated that by this act of the respondents, he suffered any bodily pain or injury or he was obstructed from performing his work. In fact this version of PW 1 is not supported by other evidence on record. The prosecution has not examined Suresh Kumar, who was named by PW 1 in his statement.

9. PW 2 Narayani Devi did not support the prosecution and she was declared hostile. Statement of Brahmi Devi as PW 10 was recorded partly and deferred on the request of the prosecution, but thereafter her remaining statement was not recorded. She was not subjected to cross-examination. Therefore, her statement cannot be used against the accused persons. PW 1 has not named any other person, who saw the alleged occurrence. PW 4 Battan Singh has contradicted PW 1 by stating that PW 1 was caught by respondent Virender Kumar from neck.

10. PW 11 Dr. Suresh Kumar in cross examination has stated that possibility cannot be ruled out that the injuries mentioned in MLC Ex. PW 11/A could be due to stiffness of ailment and injury No. 1 could be caused by fall or self inflicted or by striking against surface. Moreover, PW 1 himself has not stated that he has suffered

any injury when he was allegedly caught by the respondents. The complainant earlier reported the matter by way of complaint Ex. D-3 dated 9.6.1993 addressed to S.D.M., Barsar. In Ex. D-3, it has been stated that on 9.6.1993 at 10.30 a.m. Virender Kumar, Bhisham Singh and Jagjit Singh entered government dispensary, Bijhari and misbehaved with the Ayurvedic Incharge. He was abused and threats to do away his life were also given. This warning they have given third time. In Ex. D-3, there is no allegation that any of the respondent caught hold him from neck or gave beatings to him. In his statement in the court he has stated that prior to the incident, there was no dispute between him and the respondents. The complainant as PW 1 has made improvement in his statement in the court in comparison to what he has stated in Ex. D-3. There is no worth believing evidence on record that respondents gave threats to complainant.

11. The learned Judicial Magistrate has appreciated the material on record and pointed out various contradictions in the prosecution story as well as in the statements of witnesses, in the impugned judgement. The alleged occurrence took place at about 10.30 a.m. on 9.6.1993 and complainant reported the matter to the police at Police Station, Barsar on 10.6.1993 at 6.30 p.m. There is thus delay in making the report, which has not been explained by the prosecution. The learned Judicial Magistrate has taken a possible view from the material on record and no case for interference has been made out.

12. The result of the above discussion the appeal fails and is accordingly dismissed.

November 16, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**